

STATE OF NORTH CAROLINA
COUNTY OF IREDELL

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
17 EHR 01461

Superior Properties of Iredell LP,)	
)	
Petitioner,)	
)	
v.)	SETTLEMENT
)	AGREEMENT
NC Department of Environmental Quality,)	
Division of Water Resources,)	
)	
Respondent.)	
)	

Petitioner, Superior Properties of Iredell LP (“Petitioner”), and Respondent, North Carolina Department of Environmental Quality (“NCDEQ”), Division of Water Resources (“DWR”) (“Respondent”), (collectively referred to as the “Parties”), hereby enter into this Settlement Agreement (“Agreement”) pursuant to N.C. Gen. Stat. § 150B-31(b) in order to resolve a matter in controversy between them. This matter arose out of a January 24, 2017 assessment of a civil penalty (“Civil Penalty Assessment”) by DWR against Petitioner of \$9,721.00 for violation of Clean Water Act § 401 Water Quality Certification DWQ #07-419 dated May 2, 2007 (“401 Certification”), plus \$655.13 in enforcement costs. Specifically, Petitioner failed to comply with Condition No. 3 in the 401 Certification, which required that Petitioner provide compensatory mitigation for its impacts to 240 linear feet of stream by making a payment to the North Carolina Ecosystem Enhancement

Program (now known as the North Carolina Division of Mitigation Services ("DMS")) within one month of the May 2, 2007 issuance of the 401 Certification.

Without any hearing of fact or law in the above-styled matter, IT IS
THEREFORE AGREED BY THE PARTIES THAT:

1. In order to avoid the cost and delay of further litigation, the Parties have entered into this Agreement and have agreed that all Parties have been correctly designated and that there is no question as to misjoinder or nonjoinder.
2. The North Carolina Division of Mitigation Services ("DMS") has prepared an invoice dated May 22, 2017 for \$93,840.00 ("Mitigation Fee") for mitigation at the current fee schedule of \$391.00 per linear foot in the Yadkin River Basin, HUC 03040102, for Petitioner's previous impacts to 240 linear feet of stream as described in the 401 Certification. Said invoice was sent on May 22, 2017 via electronic mail to Petitioner's counsel, William P. Pope at wpope@popemcmillan.com and William A. Long at wlong@popemcmillan.com. A copy was also sent by United States mail to Petitioner at the following address:

Howard Bryan
Superior Properties of Iredell
P.O. Box 1654
Statesville, NC 28687

3. Petitioner agrees to pay said invoice in full by mail postmarked no later than June 2, 2017, and agrees that Petitioner's counsel is authorized to receive said invoice and ensure Petitioner's payment of said invoice in compliance with the terms of this Agreement.
4. Petitioner agrees to pay Respondent's enforcement costs of \$655.13 ("Enforcement Costs") by mail postmarked no later than June 2, 2017 by sending a check payable to the "North Carolina Department of Environmental Quality" or "NC DEQ" and delivered to the following address:

Shelton Sullivan
Environmental Senior Specialist
401 & Buffer Permitting Branch
Division of Water Resources
North Carolina Department of Environmental Quality
1617 Mail Service Center
Raleigh, NC 27699-1617

5. Respondent agrees to remit in full the above referenced penalty of \$9,721.00 assessed against Petitioner in DWR Case No. PC-2017-0005 upon receipt of payment of the invoice described in Paragraph 2 and the costs set forth in Paragraph 4. However, should Petitioner breach any part of this Agreement, Respondent may reinstate the full amount of the penalty which shall become due upon receipt and shall not be subject to any challenge by Petitioner.

6. Petitioner expressly agrees that by entering into this Agreement, Petitioner waives, for purposes of collection of any portion of the Mitigation Fee or Enforcement Costs, any and all defenses to the Civil Penalty Assessment and the underlying obligation to pay the Mitigation Fee, and that the issues in any action to collect said Mitigation Fee or Enforcement Costs will be limited to Petitioner's compliance with the terms of this Agreement.
7. Petitioner agrees that execution of this Agreement resolves any and all claims set forth against Respondent in Petitioner's Petition for Contested Case Hearing, 17 EHR 01461, and agrees to file in the North Carolina Office of Administrative Hearings ("NC OAH") a Notice of Voluntary Dismissal With Prejudice of said Petition within three (3) days of executing this Agreement. Upon Petitioner's compliance with the terms of this Agreement, the Parties agree the NC OAH matter is concluded and that no further proceedings in the NC OAH are needed or required to resolve the contested case.
8. Respondent agrees that upon Petitioner's full compliance with the terms of this Agreement, including Respondent's receipt in full of the Mitigation Fee and Enforcement Costs, Respondent will not assess any additional penalties or take further enforcement action concerning the violations set forth in the Civil Penalty Assessment, said violations having been remedied through Petitioner's full compliance with the terms of this Agreement.

9. Nothing in this Agreement shall restrict the right of Respondent to inspect or take enforcement action against Petitioner for any other violations of the water quality statutes, the relevant rules promulgated thereunder, or any water quality permits or certifications held by Petitioner. Similarly, nothing in this Agreement shall restrict the right of Petitioner to contest any other enforcement action.
10. The Parties agree that the consideration for this settlement is the promises contained herein and that this Agreement contains the whole agreement between them.
11. Respondent and Petitioner agree that, for purposes of any future bankruptcy proceeding, this Agreement is not intended as, nor shall it be deemed to constitute, a novation of any claims asserted by the Respondent against Petitioner. Petitioner further agrees that pursuant to 11 U.S.C. § 523 all sums payable to the Respondent pursuant to this Agreement are nondischargeable in bankruptcy. Nothing in this Agreement releases any nondischargeability claims that may be asserted by Respondent in any bankruptcy proceeding, and nothing in this Agreement shall be deemed a waiver of Respondent's right to rely on the nature of any claim or debt released in this Agreement to show that the claim or debt is nondischargeable.

12. This Agreement is entered into knowingly, intelligently, and voluntarily and shall be binding upon the Parties, their successors and assigns, upon execution by the undersigned. The undersigned represent and warrant that they are authorized to enter into this agreement on behalf of the Parties hereto. Petitioner was represented by counsel, William P. Pope and William A. Long, Jr. of Pope McMillan Kutteh Valdez & Scheck.

On behalf of Respondent, the North Carolina Department of Environmental Quality,
Division of Water Resources:



Karen Higgins
Supervisor
401 & Buffer Permitting Branch
Division of Water Resources
North Carolina Department of
Environmental Quality

Executed this the 26 day of May,
2017.

Approved by:



William F. Lane
General Counsel
North Carolina Department of
Environmental Quality

This the 25th day of May, 2017.

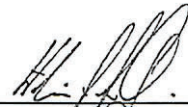
On behalf of Petitioner, Superior Properties of Iredell LP:



Esther J. Johnson
Superior Properties of Iredell LP

Executed this the ____ day of May,
2017.

Approved by Petitioner's counsel:



William A. Long, Jr.
Attorney at Law

This the 24th day of May, 2017.